

ORDINANCE NO. 20-02

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO**

**AN ORDINANCE RESTRICTING OPEN FIRES, OPEN
BURNING, AND FIREWORKS IN THE UNINCORPORATED
AREAS OF ELBERT COUNTY.**

WHEREAS, section 30-15-401(1) (n.5), C.R.S., authorizes the Board of County Commissioners ("Board") to adopt an ordinance banning Open Fires to a degree and in a manner that the Board deems necessary to reduce the danger of wild fires within those portions of the unincorporated areas of the county where the danger of forest or grass fires is found to be high; and

WHEREAS, section 30-15-401(1) (n.7), C.R.S., authorizes the Board to prohibit the sale, use and possession of fireworks, including permissible fireworks, within those portions of the unincorporated areas of the county; and

WHEREAS, the Board finds, based upon competent evidence, that the danger of forest or grass fires is high within the unincorporated areas of the county, but that the danger tends to subside with seasonal and weather changes, such that the ban on Open Fires may reasonably be suspended from time to time; and

WHEREAS, the Board finds that the Sheriff or his designee is the appropriate person, within his or her discretion, to determine whether a ban on Open Fires should be suspended during times of decreased fire danger, or elevated to Stage 2 in times of extreme fire danger, as further described herein; now therefore,

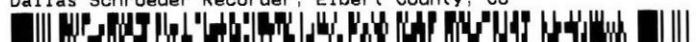
NOW THEREFORE, BE IT ORDAINED, by the Board of County Commissioners of the County of Elbert, as follows:

Section 1. Title.

This ordinance shall be known and referred to as the "**Elbert County Open Fire and Open During Restriction Ordinance**" and may be cited and referenced as such.

Section 2. Purpose.

The purpose of this ordinance is to preserve and protect the public health, safety and welfare of the citizens of Elbert County, Colorado, by restricting Open Fires, Open Burning, and the Use of Fireworks, in the Unincorporated areas of Elbert County in order to prevent forest and grass fires when a high danger of such fires exists as a result of atmospheric and natural fuel conditions, including lack of moisture and other local conditions in Elbert County.



Section 3. Application.

Unless suspended by the Sheriff, the restrictions set forth in *Section 6 and 7*, below, shall be known as a Stage 1 Fire Ban and shall apply throughout the unincorporated areas of Elbert County including public, private, state, and federal lands. In addition to the power to suspend the Stage 1 Fire Ban, the Sheriff shall also have the power to elevate the Fire Ban to Stage 2, as set forth in *Section 8*, below. If suspended the adopted fire code shall enforce open burning.

In exercising the discretion to suspend the Stage 1 Fire Ban or elevate the Fire Ban to Stage 2, the Sheriff shall consider, but not be bound by or limited to, weather conditions, lack of precipitation, and heavy fuel loading that creates a threat of fire in the forests and prairies of Elbert County, and that further creates in the discretion of the Sheriff a state of emergency with respect to fire danger; as verified by the following process according to the County's Annual Operating Plan (AOP);

- Elbert County uses the Fire Restriction Evaluation Guidelines checklist to determine whether or not Elbert County should implement or rescind fire restrictions.
- These guidelines include the following criteria as part of the assessment process as measured by the Franktown weather station: 1000 hour fuels, Energy Release Component, Fire Danger Adjective Rating, Availability of suppression resources, High occurrence of human caused fires, Adverse fire weather conditions predicted to continue, Local fire preparedness level, and Input from local fire officials. If the Franktown weather station is not available the Sheriff has the authority to use alternative methods to gain necessary data.

Section 4. Definition of Open Fire or Opening Burning.

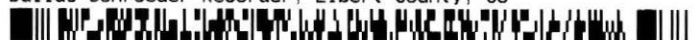
For purposes of this ordinance, "Open Fires" or "Open Burning" shall be defined as the burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber, or a spark arrestor lid including, but not limited to, campfires, bon fires, the lighting of any explosives and fireworks of any kind or brand, the lighting of model rockets, and the burning of fence lines or rows, fields, farm lands, range lands, wildlands, burning of trash and debris.

Section 5. Definitions.

For purposes of this ordinance, "Fireworks" shall be defined as set forth in section 12-28-101(3), C.R.S., and specifically shall include "permissible fireworks" as defined in section 12-28-101(8), C.R.S. **Any devices that meet the statutory definition of fireworks referenced herein, but that are not "permissible fireworks" shall remain prohibited at all times.**

For purpose of this ordinance, "Portable Outdoor Fireplace" shall be defined as a portable, outdoor, solid-fuel-burning fireplace that may be constructed of steel, concrete, clay or other non-combustible material. A portable outdoor fireplace may be open in design, or may be equipped with a small hearth opening and a short chimney or chimney opening in the top.

For the purpose of this ordinance, "Recreational Fire" shall be defined as an outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or pit and has a total fuel area of feet (914 mm) or less in diameter and 2 feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth, or similar purpose.



Section 6. Unlawful Acts.

Except as provided in *Section 7 or 8* below, when restrictions on Open Fires, Open Burning, and Use of Fireworks are enacted, it shall be unlawful for any person to build, maintain, attend or use an Open Fire, conduct Open Burning, Burning plastics, tires, chemically treated wood products and other man-made materials, Tethered Sky Lanterns, Exploding targets, tracer ammunition and incendiary ammunition; or to Use Fireworks in the unincorporated areas of Elbert County including public, private, state, and federal lands. This includes; the operation or use of any internal combustion engine (e.g., chainsaw, etc.) without a spark arresting device properly installed, maintained and in effective working order and; the operation of any pest control equipment which relies upon the ignition of flammable gases or liquids.

- (a) It shall also be unlawful for any person to offer for sale any Fireworks, as defined in *Section 5*, in the unincorporated areas of Elbert County including public, private, state and federal lands; provided however, that it shall not be a violation of this *Section 6*, if the person offering Fireworks for sale prominently displays a public notice sign at each point of sale location which is clearly visible to purchasers. Each such public notice sign shall measure not less than two (2) feet by three (3) feet and shall consist of a white background with black lettering. Letter size shall be a minimum of three (3) inches high. The public notice sign shall read:

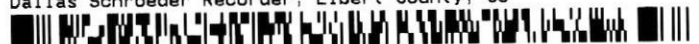
PUBLIC NOTICE

When Elbert County Fire and Burning Restrictions are in effect, the use of all Fireworks is strictly prohibited. Information on current restrictions can be found at the Sherriff's Office website at <http://www.elbertcountysheriff.com/>.

Section 7. Stage 1 – Exceptions.

Except where the Sheriff has elevated Fire and Burning restrictions to Stage 1 (enacted in cases of extreme fire danger), the following shall be excepted from *Section 6* of this ordinance during Stage 1 restrictions:

- Fires within liquid-fueled or gas-fueled stoves, grills, fire pits or other gas or liquid fueled appliances.
- Outdoor welding or hot work
- Residential use of charcoal grills, smokers, tiki torches, fires in chimineas or other portable fireplaces or patio fire pits, as long as the fires are supervised by a responsible person at least 18 years old. Portable fire pits and chimineas must have a lid or screen and all openings must be less than ¼ inch.
- Small recreational fires contained in fixed permanent metal/steel fire pits (rock fire rings are considered temporary and not permanent) with flame lengths not in excess of four feet. Recreational pit dimensions shall not exceed 3 feet in diameter and 2 feet in depth.
- Use of indoor fireplaces and wood-burning stoves with an approved chimney spark arrestor.
- The sale and use of fireworks in compliance with State and Local regulations.



- Use of Educational Rockets.
- Exploding targets, tracer ammunition and incendiary ammunition.
- Fire suppression or fire department training fires.
- Discharge of firearms

Acts Allowed With A Permit From Your Local Fire Department:

- Open burning per local fire department regulations.
- Professional firework displays.
- Tethered Sky Lanterns

Section 8. Stage 2 – Exceptions.

The Sheriff may impose Stage 2 Fire and Burning restrictions in cases of the most extreme fire danger. When Stage 2 restrictions are imposed, the only exceptions to *Section 6* of this ordinance are:

- Use of indoor fireplaces and wood-burning stoves with an approved chimney spark arrestor.
- Fires within liquid-fueled or gas-fueled stoves, grills, fire pits or other gas or liquid fueled appliances.
- Residential use of charcoal grill fires and smokers when such use is supervised by a responsible party at least 18 years of age.
- Fire suppression or fire department training fires.
- Discharge of firearms

Acts Allowed With A Permit From Your Local Fire Department:

- Outdoor welding or hot work.
- Professional firework displays.
- Use of educational rockets.
- Small recreational fires contained in fixed permanent metal/steel fire pits (rock fire rings are considered temporary and not permanent) with flame lengths not in excess of four feet. Recreational pit dimensions shall not exceed 3 feet in diameter and 2 feet in depth.

Section 9. Administration and Enforcement.

The Elbert County Sheriff shall be responsible for the administration and enforcement of this ordinance. All inquiries regarding the current status of fire restrictions in Elbert County should be directed to the Sheriff's Office. Most information about current fire ban restrictions can be obtained at the Sheriff's Office website at <http://www.elbertcountysheriff.com/>

Section 10. Penalty for Violations.

Any person who violates this ordinance from its effective date commits a class 2 petty offense



under section 30-15-402(1), C.R.S. and, upon conviction thereof, shall be punished by a fine of not more than \$1,000.00 for each separate violation, plus a surcharge of \$10 under section 30-15-402(2), C.R.S.

Section 11. Penalty Assessment Procedure.

The penalty assessment procedure provided in section 16-2-201, C.R.S., may be followed by the arresting officer for any such violation of this ordinance:

- Pursuant to the penalty assessment procedure, the violator may pay a fine in the amount of one hundred dollars (\$100.00), plus a ten dollar (\$10) surcharge for a first time violation of any of the provisions of this Ordinance.
- Subsequent offenses shall be subject to a fine of two hundred dollars (\$200.00) for a second offense, five hundred dollars (\$500.00) for a third offense and one thousand dollars (\$1000.00) for each additional offense, plus applicable surcharges.
- If the penalty assessment procedure is not utilized by a person cited for violating this Ordinance, and the alleged offender is ultimately found guilty by the Elbert County Courts, court costs and any additional financial requirements deemed necessary or appropriate to the Court may be assessed in addition to the fine.

Section 12. Disposition of Fines and Forfeitures.

All fines and forfeitures for the violation of this ordinance shall be paid to the Treasurer of Elbert County.

Section 13. Additional Remedies.

The remedies provided in this ordinance shall be cumulative and in addition to any other federal, state or local remedy, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, including, but not limited to, prosecution under section 18-13-109, C.R.S., or any other applicable statute, ordinance, rule, order or regulation.

Section 14. Severability.

If any section, subsection, clause, sentence or phrase of this ordinance is adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair or invalidate any other provisions of this ordinance which can be given effect without such invalid provision.

Section 15. Emergency.

The Board hereby finds, determines and declares that this ordinance is necessary for the immediate preservation and protection of the health, safety and welfare of the citizens of Elbert County, Colorado. This ordinance shall take effect immediately upon adoption on second and final reading.

Section 16. Effective Date.

This ordinance shall be effective immediately and shall remain in effect until such time as this ordinance is amended temporarily, suspended, or repealed. The Sheriff, by Executive Order, may temporarily suspend this ordinance from time to time should the fire danger in Elbert County



decrease. Likewise, the Sheriff may reinstate this ordinance by Executive Order after it has been temporarily suspended.

Section 17. Repeal.

Ordinance No. 0-996-001, Ordinance No. 0-997-003, Ordinance No. 06-01, are hereby repealed.


INTRODUCED AND READ ON FIRST READING, on the 14th day of October, 2020, and ordered published in full in the Elbert County News in Kiowa, Elbert County, Colorado.

**THE BOARD OF COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO**

BY: 
Chris Richardson, Chair

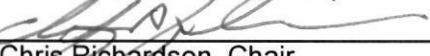


ATTEST:


Grant Thayer, Deputy Chair

ADOPTED ON SECOND AND FINAL READING, on the 18th day of November, 2020 and ordered published by Title only in the Elbert County News.

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO**

BY: 
Chris Richardson, Chair



ATTEST:

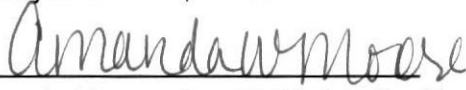

Grant Thayer, Deputy Chair



CERTIFICATE

I hereby certify that the foregoing Ordinance No. 20-02 was read and adopted on the second reading as an ordinance necessary for the immediate preservation of the public health, safety, and welfare at the regular meeting of the Board of County Commissioners of the County of Elbert on November 18, 2020, and the same published in full in the Elbert County News, a newspaper of general circulation published in Elbert County. Said ordinance was published in its entirety in the Elbert County News on the 29th day of day of October, 2020.




Amanda Moore - Deputy Clerk to the Board

CERTIFICATION

I, **Amanda Moore**, Elbert County Deputy Clerk to the Board, do hereby certify that the foregoing Ordinance 20-02 entitled **AN ORDINANCE RESTRICTING OPEN FIRE AND OPEN BURNING IN THE UNINCORPORATED AREAS OF ELBERT COUNTY** is a true, correct, and complete copy from the records of my office, that said ordinance was duly adopted by the Board of County Commissioners of Elbert County, and is in full force and effect.




Amanda Moore - Deputy Clerk to the Board

